IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order no. 244 of 2006
with
Civil Appln No.324 of 2006

Shri Anthony Swamy.. appellant
vs
The Mumbai Mun Corpn and ors..respondents

Mr Anil Singh for D R Shah for appellant
Mrs Geeta Joglekar for BMC
Mr. Pesi Modi i/b K D Abhichandani for respondent no.2

CORAM; A.M.KHANWILKAR J.
DATED l3.4.2006

P.C.

l. Heard parties. Perused the material on record. I see no reason to depart from the conclusion reached by the court below in dismissing the notice of motion no. 465l of 2002 taken out by the appellant for interim relief during the pendency of the suit. In addition to the reasons recorded by the trial court, in my opinion, the present appeal is devoid of any merits for the simple reason that the issues now raised in this appeal or present proceedings were put in issue in the earlier round of proceedings, which came right upto this court in A.O.St No.5620 of 2002, which also pertains to the same suit structure standing on CTS no.l406/C3 S.No. 504 part,Malad village, Malad West, Mumbai.

The suit proceedings also refer to the same structure. In that sense the observations made by this court in the earlier round of proceedings relate to the same structure (as description given thereof in the suit notice corresponds to the structure occupied by the appellant, which is not on CTS no.l406/C3 S.No. 504 part in village Malad, Mumbai but on S.No.25 hissa no. 2 part CTS no. 345 at village Valnai). This very contention has been considered in the earlier round of litigation by our High Court and issue answered against the appellant and the finding recorded in the decision in the appeal on l3.3.2002, will bind the appellant. The appellant cannot be permitted to agitate the same issue in the present proceedings. Viewed thus there is no merit in this appeal.

2. The counsel for the appellant states that the structure occupied by the appellant is on different land than CTS no. l406/C3 S.No. 504 part. He submits that he has no objection if the corporation was to demolish the structure standing on the said plot- as he has no concern with that structure. He,however, submits that the description given in the suit notice issued by the Corporation regarding the suit structure occupied by the appellant is not on CTS no. 345/C part of village Valnai of Malad

West Mumbai but on S No 25 hissa no. 8 part and the corporation should take care to ensure that the suit structure is not affected in any manner. Suffice it to observe that in so far as the structure on CTS no. l406/C3 S.No. 504 part of village Malad, Mumbai is concerned, has been found to be unauthorised and relief claimed by the appellant with regard to that structure has been refused even in the earlier proceedings. It is also pertinent to note that this is the 4th suit in point of time. Indeed, the challenge raised is to the recent notice issued under section 35l of the Act. Nevertheless, the issue raised in the present proceedings is reiteration of the stand taken in the earlier matter which has already been negatived. Suffice it to observe that it will be open to the corporation to proceed against the said structure in accordance with law.

. Appeal and accompanying civil application dismissed with above observations, with no order as to costs.